Berle X

Berle and His World: An Homage to William W. Bratton

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With its intense historical focus on Berle and his work, the tenth annual Berle symposium—*Berle and His World: An Homage to Bill Bratton*—serves as both a fitting bookend to the scholarly work begun at *Berle I,*¹ and as a launch pad for the next ten years of Berle-inspired research. Additionally, *Berle X* serves as a tribute to William W. (Bill) Bratton, the world’s leading scholar on Adolf Berle. Throughout his career, Bill has gradually increased his and our understanding of Berle and Berle’s impact on American corporate law theory. The richness and originality of Bill’s seminal and constantly-evolving Berle scholarship is a beacon for those interested in corporate law theory. Indeed, it is almost impossible to write about Berle without grappling with Bill’s work, the centerpiece of which is *Shareholder Primacy’s Corporatist Origins: Adolf Berle and the Modern Corporation*² (*Corporatist Origins*). The opportunity directly to engage Bill and his work has been a critically important factor in assembling almost every Berle symposium. Moreover, the body of work that Bill has stimulated at the ten Berle symposia to date represents much of the payment that the Berle Center has so far made on its dedicatory promise “to foster an ongoing dialogue with the work of Adolf A. Berle, Jr.”³

Bill’s contributions to the Berle Center, the annual Berle symposia, and to the larger world of corporation law scholarship which he has touched in so many ways, have a very personal dimension for me. In September 2008, shortly after I arrived at Seattle University, I reached out to Bill for advice as I thought about how to shape and focus what became

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the Berle Center. I was struggling at the time both about what was possible and, more critically, what was worthwhile. Bill talked me off the ledge of uncertainty, and has been central to all that we have since accomplished. He helped me identify key participants for Berle I, and, along with co-author Michael Wachter, wrote a brilliant follow-up to *Corporatist Origins*. In all, Bill has now attended seven of the ten Berle symposia, including our sojourns to London for Berle IV and to Sydney for Berle V; he has also contributed three valuable papers, including his contribution to this symposium.4

I cannot reliably identify the first time I met Bill. It was some time in the 1990s. But I do remember my first impression: a brilliant, faux-arrogant, gentle man with a Superman-x-ray-vision-like ability to near instantly see scholarly arguments and people for what they really are. I always feel a little inadequate around Bill, which is my fault, not his. A truer colleague and friend there could not be.

As he has touched me, Bill has touched many others. I reached out to a few Berle symposium alumni for thoughts in that regard, and received the following replies:

Marc Moore5:

In his pioneering line of legal-historical works over the past two decades, written both individually and in conjunction with Michael Wachter, Professor Bratton has succeeded in reinvigorating Berle’s scholarship for the modern age while also greatly enriching the general quality of debate around it. Bratton’s work on Berle is truly unique in its academic rigour and contextual sophistication, and has been inspirational for scholars like myself seeking to shed light on one of American legal history’s most complex and compelling characters. The most fitting tribute I can pay to Professor Bratton is to predict that, in time, his own vast body of work will come to attract a similar degree of interest and reverence from future generations of legal scholars as that of Berle himself.

Anne M. Tucker6:

People in need of encouragement, of which I constantly count myself, remember those who give encouragement without asking or prompting. This is especially true when the source of encouragement

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5. Reader in Corporate Law, University of Cambridge; Co-organizer, Berle IV.
6. Associate Professor, Georgia State University College of Law; Co-organizer, Berle IX.
is someone highly regarded and seemingly has confidence to spare. Bill once encouraged me—in an exchange that he probably doesn’t remember because he engaged with so many scholars. He encouraged me to keep exploring mutual funds, a topic that was not well trod when I started. He said that the buy-side forces would be a major force in corporate governance, and he has been on the money. This small memory demonstrates three things about Bill that have repeated themselves over all subsequent interactions with him: (1) his generosity with feedback, (2) the breadth of his expertise, and (3) his instinct for spotting critical issues. His work has benefited me, and the field, in big and small ways.

Robert B. Thompson7:

Bill Bratton writes articles with a rhythm that regular readers greet with anticipation. By the time I have absorbed one article, I find myself wondering what he will take on next. To hear Bill present the article doubles the benefit. If the subject relates to Berle and Means, the gain is geometric. If he and Michael Wachter had done nothing more than provide us the early, middle and late Berle typology, their contribution to the literature would be worth saluting. But it turns out that THE MODERN CORPORATION AND PRIVATE PROPERTY contains two apparently contradictory lines of thought, mixed among the parts and chapters of the book, such that additional reasoning (and sleuthing) has been required and thus multiple opportunities to follow Bill on a trail through the intellectual history of key ideas of corporate theory. The Great Depression and the New Deal’s response that provided MCPP such a powerful platform came late in the writing of the book such that it presents elements of both early Berle and middle Berle. Berle’s views had changed dramatically from those of the corporate professor of the pre-Depression 1920s to the Brain-truster seeking solutions for a president of a country weighed down by massive economic upheaval. Yet middle Berle, including the corporatist approach relying on collective corporate solutions, hardly survived FDR’s first term before it began to morph into late Berle, what Bill has termed a happy story relying on New Deal programs that eventually brought social control over finance, even if not quite what middle Berle may have foreseen. The Bratton piece in this symposium adds additional layers to this understanding by focusing on Means’s unpublished dissertation and his post-MCPP career, both of which hewed more closely to middle Berle. The contrast brings both middle Berle and late Berle into sharper contrast in a way that, as most Bratton pieces do, rewards the reader with a clarity beyond that previously available.

7. Peter P. Weidenbruch, Jr. Professor of Business Law, Georgetown Law School.
Elizabeth Pollman⁸:

Many scholars cite Berle for propositions that are just myths and stories we tell in corporate law. Bill Bratton is the rare scholar who has instead given Berle his due, taking care to reveal the evolution in Berle’s work and put it in context so that we can better understand it with our modern eyes. Bill’s work has the power to tell you whose shoulders you’re standing on.

Who would think to look for Gardiner Means’s Ph.D. dissertation and figure out it’s a missing chapter of sorts to the famous work by Berle and Means? Bill, of course. And he can tell you how it resolves the contradictory parts and puts the landmark work of corporate law in new light, all while connecting it to current trends in corporate governance. Berle symposium participants also know that Bill asks some of the best questions. I think it’s his special mix of healthy skepticism and curiosity. You never know what Bill is going to say, but it’s always great and inspires you to learn more.

Leo E. Strine, Jr.⁹:

Aside from his incomparably smooth style of oral presentation, Bill’s most striking quality to me as a judge looking for wisdom in addressing actual real-world disputes, is something he has in common with Berle, which is his ability to see the world in its true colors, without bleeding out the grey so important to understanding commerce among human beings. And his commitment to active engagement with his colleagues and with students, I can vouch, influenced his scholarship, as his important 2008 article about Berle with Michael Wachter emerged out of a seminar Michael and I put on for several years, which led us all to passionately discuss and reflect upon how to understand Berle’s tart exchange with Merrick Dodd.

Harwell Wells¹⁰:

Bill and his work have meant a great deal to me; he is perhaps the corporate law scholar most attuned to the development of the field and its ideas, ever since his classic works in the late 1980s on theories of the firm showed how historical analysis could illuminate basic developments in modern corporate law. He’s written many superb articles since then; my own favorites are his work on Enron, and his recent essay on the Separation of Corporate Law and Social Welfare, but that’s just picking two of many wonderful pieces. And I’ll add that, in a time when Berle is more invoked than read, Bill has made

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⁸. Professor of Law, Loyola Law School, Los Angeles.
⁹. Chief Justice, Supreme Court of Delaware.
¹⁰. I. Herman Stern Professor, Beasley School of Law, Temple University.
himself an expert on him and, amazingly, distilled new insights from his work.

The above represent all but one of the replies I received. The other was from Frank Partnoy.11 In response to my request, Frank, in relevant part noted:

I’ll think about whether there are particular aspects of Bill’s comments about Berle generally, including in response to other papers, that enriched our debate and conversation. I think Bill’s early work on preferred stock was very much influenced by Berle as well. I also think it would be worth capturing how Bill’s “oral” presentations were essentially a second written bite at the same apple as his published articles. I would very much like for Bill to make those presentations available. I’ve mentioned that idea to him before. I wonder if there might be a delicate way of asking him to publish each of those “speeches” so that people outside the room could get his wisdom. If you like that idea, and would like me to help ask him, I’d be happy to do that.

This was a truly brilliant idea. I had been planning to do an overview of Bill’s scholarship for this Foreword. What if instead we could publish Bill’s presentations? What a gift to scholars, now and in the future. And so it came to pass. Frank reached out to Bill, who graciously, and indeed enthusiastically, curated and contributed the best of his many great presentations.12

Berle X was a memorable live event. The published volume, with the addition of Bill’s speeches, becomes a collector’s item, with a shelf-life that will likely extend for as long as scholars remember and consult the work of Adolf Berle and his posthumous intellectual soulmate—William W. Bratton.

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11. Professor of Law, University of California, Berkeley.